

## **AMENDMENTS TO THE DRAWINGS**

Please replace Figures 1A and 1B with the enclosed Replacement Sheets of Figures 1A and

1B.

## **REMARKS**

### **REVIEW**

The current application sets forth Claims 1 through 21, of which Claims 1, 8, 16, and 17 are independent claims. Presently, no claims have been indicated as allowed. Claim 15 stands objected to as being dependent on a rejected base claim, but would be allowable if rewritten in independent form including all the limitations of the base claim and any intervening claims. Claims 1-3 and 16 stand objected to for various informalities.

Claim 1-3 and 16 also stand rejected under 35 U.S.C. § 112, second paragraph for failing to particularly point out and distinctly claim the subject matter Applicant's regard as their invention. Claims 1-7 and 17-21 stand collectively rejected under 35 U.S.C. § 102(b) as being allegedly anticipated by U.S. Patent No. D450,620 to *Simpson*. Claims 8-10 and 12-14 stand collectively rejected under § 102(b) as being allegedly anticipated by U.S. Patent No. 4,538,751 to *Peterson*. Claim 11 stands rejected under 35 U.S.C. § 103(a) as allegedly unpatentable over *Peterson* in view of U.S. Patent No. 5,761,843 to *Lync, et al.*

### **DRAWINGS**

Applicant submits herewith a replacement drawing sheet in accordance with 37 C.F.R. 1.121(d) in response to objections raised by Examiner. Amendments to the specification are also made to reference the added element of a torsional spring.

### **35 U.S.C. §112, SECOND PARAGRAPH REJECTION**

Claims 1-3, and 9-11 and 16 are rejected under 35 U.S.C. § 112, second paragraph, as failing to distinctly point out the claimed invention. The above amendments cancel claim 9 rendering this rejection moot as to this claim.

Claim 1 has been amended to include structural cooperative relationship between the attachment means and the platform.

Claims 2, 3 and 10 have been amended to provide proper conjugation of the verbs.

Claim 11 has not been amended, however, because the subject of the sentence is “jaw members” not “each of said at least one attachment means.” Therefore, the conjugation as set forth originally is correct, and no amendment should be necessary.

Claim 16 also stands rejected under 35 U.S.C. § 112, second paragraph, for including a term in line 5 that for which antecedent basis is already found in the claim. The claim has been amended to correct this.

### **35 U.S.C. §102(b) REJECTION**

35 U.S.C. § 102 provides that applicant is entitled to a patent for his invention unless it is proved to be anticipated by a piece of prior art. *See* 35 U.S.C. § 102. The burden is, therefore, upon the Examiner to show that “**every element** of the claimed invention **must** be **identically** shown in a single reference.” *Diversitech Corp. v. Century Steps, Inc.*, 850 F.2d 675, 677, 7 U.S.P.Q.2d 1315, 1317 (Fed. Cir. 1988; emphasis added). The disclosed elements must be arranged as in the claim under review. *See Lindemann Machinefabrik v. American Hoist & Derrick Co.*, 730 F.2d 1452, 1458, 221 U.S.P.Q. 481, 485 (Fed. Cir. 1984). If any claim, element, or step is absent from the

reference that is being relied upon, there is no anticipation. Kloster Speedsteel AB v. Crucible, Inc., 793 F.2d 1565, 230 U.S.P.Q. 81 (Fed. Cir. 1986; emphasis added). Anticipation under 35 U.S.C. Section 102 requires that there be an identity of invention. See Shatterproof Glass Corp. v. Libbey-Owens Ford Co., 758 F.2d 613, 619, 225 U.S.P.Q. 635, 637 (Fed. Cir. 1985; emphasis added). In PTO proceedings, claim language should be read in light of the specification as it would be interpreted by one of ordinary skill in the art. In re Sneed, 710 F.2d 1544, 1548, 218 U.S.P.Q. 385, 388 (Fed. Cir. 1983). The following analysis of the present rejections is respectfully offered with guidance from the foregoing controlling case law decisions.

**Claims 1-7.** Claims 1-7 stand rejected as allegedly being unpatentable over *Simpson*.

Applicant respectfully traverses such ground of rejection with the above amendments. It should be noted that *Simpson* does not disclose or suggest a contact for magnetically securing the platform to a base. Therefore, this reference cannot by law anticipate the Claims 1-7 as amended. Applicant respectfully requests the withdrawal of this ground of rejection. Support for this amendment is found in the specification, paragraph [0024].

**Claims 8-10, 12-14.** With respect to the 35 U.S.C. § 102(b) rejection of claims 8-10 and 12-14, and in view of the significant distinctions discussed herein, Applicant respectfully traverses such ground of rejection with the above amendments and the following remarks.

*Peterson* is directed to a waterproof container for articles, for example, a pack of cigarettes, where the container maybe clipped to a user's clothing. The structures described in *Peterson* are far different from those set forth in the present application and in the claims, as amended. For

example, *Peterson* discloses a body (12) having a cavity (26) that extends the length of the body (12) and a cap (14) that is dimensioned to mate with the body portion. Cap (14) is reversible, meaning that either end of the cap may be fitted into the opening (28) of the cavity (26) to provide a watertight seal in either of the caps two orientations. Col. 3, ll. 33-35. Examiner asserts that both items 26, and 28 of *Peterson* teach slots. It should be noted that contrary to the examiner's characterization, *Peterson* defines item 28 is referred to as a "port," or an opening, of the cavity (26). One end of the cap (14) includes a clip extending therefrom (Figs. 3 & 6). The clip permits attachment of the case to clothing, or the like, irrespective of the clothing's orientation. Fig. 7; Col. 4, ll. 22-29. *Peterson* does not disclose or even suggest that the clip is affixed to the bottom of the platform such that a top surface of the platform remains upright when attached to a horizontal projection. Based upon the above-described distinctions and the above amendments, it is believed that Claims 8-10 and 12-14 are now in condition for allowance and acknowledgement of the same is earnestly solicited.

**Claims 17-21.** Rejection of these claims is rendered moot by the cancellation of the claims requested by this amendment.

### **35 U.S.C. § 103(a) REJECTIONS**

**Claim 11.** In view of the above amendments and the significant distinctions discussed above, Applicant respectfully traverses such grounds of rejection. An invention is only obvious under 35 U.S.C. § 103(a) if "the subject matter **as a whole** would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter

pertains." (emphasis added). The Examiner's burden of proving obviousness is not met by merely establishing that all of the elements of a claimed invention would have been obvious. It must be shown that the particular combination of elements used to form the whole invention would have been obvious. There must be some suggestion, incentive, or motivation to combine the elements in the manner as in the claimed invention. Further, all of the elements of the claimed invention must be taught or suggested by the combination. *See* MPEP § 2143.03 (citing *In re Royka*, 490 F.2d 981 (CCPA 1974)).

Because *Peterson* does not teach or suggest a structure that is configured to keep the platform upright when attached to a horizontal projection, it cannot be used alone or in combination with *Lynch et al* to render the Claim 11, as amended, obvious. Therefore, the Examiner has not met the burden of establishing a prima facie case pursuant to MPEP §2143.03. Applicant respectfully urges the Examiner to withdraw such grounds of rejection.

**Added Claims.** Applicant has added new claims 22 through 24. It is believed that no new matter has been added and that support for the added claims is found in the specification. No fees are necessary as the number of claims that result upon entry of the amendment is less than that paid for by the original filing fee. *See* MPEP § 607.

#### **CITED RELEVANT PRIOR ART**

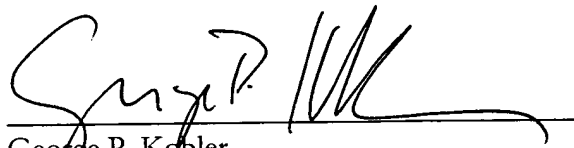
It is not believed that any of the prior art cited but not relied upon, alone or in combination either with each other or other cited prior art teaches, discloses, suggests, or makes obvious the claimed features of the present invention.

**CONCLUSION**

In view of the foregoing amendments and comments, Applicant respectfully requests withdrawal of the current grounds of rejection and the issuance of a formal Notice of Allowance. The Examiner is invited to telephone the undersigned at his convenience should only minor issues remain after consideration of this amendment in order to permit early resolution of the same.

Respectfully submitted,

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